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to the Legislative Assembly  
of British Columbia

# **An Investigation into the Administration and Collection of Traffic Camera Fines**

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## **An Investigation into the Administration and Collection of Traffic Camera Fines**

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An investigation into the administration and collection of traffic camera fines

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On August 12, 2002, my Office commenced an Ombudsman initiated investigation into delays associated with administering and collecting traffic camera fines<sup>1</sup>. I took this action because it appeared that administrative delays had caused many thousands of people to be served with traffic camera tickets far beyond the time limits established by the courts as being consistent with the Canadian Charter of Rights and Freedoms. Although the public authorities involved in administering this program, the Insurance Corporation of British Columbia (ICBC) and the Ministry of Attorney General (the Ministry), had acknowledged publicly that there were a great number of unserved tickets, I was concerned that neither agency appeared to be taking measures to address all aspects of the problems presented by this situation.

There were essentially two phases of our investigation of this matter. First, our investigation was directed to ensuring that measures were taken to address the ongoing problems caused when people received traffic camera violation tickets for offences that had occurred many months and even years earlier. Without timely notice of these alleged offences, people found it

difficult to recall any of the details regarding the tickets that they received. They often felt compelled to pay the fines because they could recall little about the alleged offence due to the lengthy passage of time. Second, we wanted to ensure that people who had received delayed service of these violation tickets — that is, beyond the time frames established by the courts — were aware of any remedies that may still be available to them to contest the offences.

Due to the high level of public interest in this issue, and also because of the number of outstanding photo radar tickets that ICBC was then attempting to serve, I issued a press release at the early stages of this investigation to let the public know that we were looking at all aspects of this situation. Following my decision to inform the public of my investigation of this matter, many individuals approached our Office to tell us how the delayed service of photo radar tickets had affected them. We assisted many of these individuals with their ongoing concerns. The feedback we received from these people assisted us with our investigation.

Although I have not issued formal recommendations regarding our investigation, I indicated

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<sup>1</sup> Although most of the delays that generated complaints to my Office have involved the now-disbanded photo radar program, the same administrative structure has been used to operate the ongoing intersection traffic safety program. In this report, all references to the traffic camera program are meant to include tickets and fines issued under both the photo radar and intersection traffic safety programs. When comments are primarily directed at only the photo radar program or the intersection traffic safety program, these individual terms have been used.

that I would report on the outcome of our investigation. Section 31(3) of the *Ombudsman Act* authorizes me to comment publicly when I consider it to be in the public interest or in the interest of a person or authority. Section 31(3) reads as follows:

*31 (3) If the Ombudsman considers it to be in the public interest or in the interest of a person or authority, the Ombudsman may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the exercise of the Ombudsman's duties under this Act or to a particular case investigated by the Ombudsman.*

I am hopeful that this report of our investigation of the traffic camera program will be of assistance to all authorities who share responsibility for various aspects of programs. I believe that this report illustrates the importance of co-ordinating shared activities and ensuring that one person or agency has overall responsibility for the entire program.

I also consider it important that the many people who contacted my Office concerning this issue receive a summary of my Office's review of the issues raised. This report also comments on other issues that flowed from the initial concern about delay in serving traffic camera tickets.

The Government of British Columbia commenced the traffic camera program initiative in August 1996. This initiative to improve road safety resulted in the issuance of the following two types of violation tickets:

- a) for speeding as identified by portable police-operated photo radar cameras; and
- b) for violating traffic lights as identified by intersection traffic safety cameras at fixed locations throughout the province.

The administering of the traffic camera program involved a number of interconnecting lines of responsibility between the Ministry and ICBC.

The Ministry is responsible for setting policy and issuing directives to govern the administering of provincial traffic offences. ICBC provided us with the following description of its understanding of how Section 18.1 of the *Offence Act* applies to its administrative functions related to traffic offences.

*In carrying out its administrative functions related to traffic offences, ICBC's actions are dictated by directives of the Assistant Deputy Minister, pursuant to Section 18.1 of the Offence Act. Specifically:*

*18.1(1) The Insurance Corporation of British Columbia, in carrying out its responsibilities under this Act, **must** act in accordance with any directives issued by the Assistant Deputy Attorney General, Criminal Justice Branch.*

*(2) For the purposes of subsection (1), the Assistant Deputy Attorney General, Criminal Justice Branch, may issue **general or specific** directives. [emphasis added]*

*The Act does not give ICBC any discretion or latitude in the manner in which it is to comply with the Assistant Deputy's directives. Absent any directive of a "general" nature, ICBC has no authority but to follow the Assistant Deputy's specific directive(s)...*

ICBC handled most of the administrative functions associated with the traffic camera program. Peace officers from the Ministry assigned to ICBC's Integrated Traffic Camera Unit reviewed the photographs, made determinations regarding alleged offences, signed the violation tickets, and investigated enquiries lodged by those who maintained that errors were made in the issuance of the violation tickets. The violation tickets were processed, mailed and, if necessary, served by ICBC. In accordance with provincial regulations and the Ministry's direction, ICBC carries out a variety of administrative functions to assist with the issuing, processing and serving of traffic camera tickets and the collection of fines.

Traffic camera violation tickets were mailed by ICBC to the last known address that ICBC had for the owner of the motor vehicle bearing the licence plate noted in the traffic camera photo. If the mailed violation ticket was returned as

undeliverable, the legislation required that the traffic camera ticket be served in person. ICBC enlisted the services of private sector process servers to serve these tickets. These process servers then made a number of attempts to serve the violation tickets at different times of the day. This process can take up to two months, depending on the number of attempts made to serve the ticket. If the process servers are unable to serve the tickets, the tickets are returned to ICBC. ICBC then attempts to obtain an updated address for the

owner of the motor vehicle, using various resources and databases available to ICBC. The tickets are then returned to the process servers for another attempt at service of the tickets.

Since at least July 1999, ICBC and the Ministry attempted to address the delays that were occurring in serving traffic camera violation tickets to alleged offenders. To aid in understanding the measures taken, which were reviewed during the course of our investigation, we prepared the following Chronology.

**Table 1 — Chronology**

|                     |                                                                                                                                                                                                                                                         |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| August 1996         | Traffic Camera Program initiated.                                                                                                                                                                                                                       |
| July 26, 1999       | Instructions issued by Ministry officials advising ICBC to discontinue serving photo radar tickets for violation dates prior to January 1, 1998.                                                                                                        |
| June 2000–July 2001 | ICBC asserts that it was seeking direction from the Ministry regarding the issuance of unserved photo radar tickets while continuing to serve all tickets for violation dates after January 1, 1998.                                                    |
| June 2001           | Issuance of new photo radar tickets discontinued.                                                                                                                                                                                                       |
| July 2001           | Ministry was aware that ICBC had over 200,000 unserved photo radar tickets dating back to 1996. Ministry maintains that it thought all unserved tickets were for people who had attempted to evade service of violation tickets.                        |
| Summer 2002         | Senior officials within the Ministry's Criminal Justice Branch (CJB) were first alerted that the "old" photo radar tickets that ICBC was attempting to serve were being served to people who had made no attempt to evade service of violation tickets. |

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| August 12, 2002    | We commenced our Ombudsman initiated investigation into delays in administering and collecting traffic camera fines.                                                                                                                                                                                                                                                                                                                                                                 |
| September 24, 2002 | ICBC still attempting to serve traffic camera tickets for offences that occurred any time after January 1, 1998.                                                                                                                                                                                                                                                                                                                                                                     |
| September 25, 2002 | Assistant Deputy Attorney General of the CJB issued a directive under Section 18.1 of the <i>Offence Act</i> directing ICBC to discontinue serving all photo radar tickets unless there was evidence to indicate that there had been active evasion by the alleged violator. The CJB adopted a policy to not prosecute photo radar tickets that were served more than 18 months after the date of the alleged offence unless evidence existed to indicate active evasion of service. |
| September 26, 2002 | ICBC discontinued serving photo radar tickets but asked the CJB for guidance regarding the service of "old" intersection traffic safety tickets, some of which exceeded 18 months since the date of the alleged offence and where there was no evidence of active evasion of service.                                                                                                                                                                                                |
| December 16, 2002  | Assistant Deputy Attorney General of the CJB issued a directive under Section 18.1 of the <i>Offence Act</i> directing ICBC to discontinue serving all intersection traffic safety tickets alleging an offence date greater than 12 months earlier unless there was evidence of active evasion of service <sup>2</sup> .                                                                                                                                                             |
| July 1, 2003       | Changes to the <i>Offence Act</i> provided an option for people wishing to challenge traffic camera tickets where there was a delay in serving the ticket. This option was to file an affidavit with the Provincial Court instead of the Supreme Court which was the previous process.                                                                                                                                                                                               |

<sup>2</sup> As it would take an estimated six months to have appeals heard by the courts, this action and corresponding policy changes enacted by the CJB ensured similar treatment of all traffic camera tickets.

ICBC advised us that since July 1999 it had not been serving photo radar tickets for offences that had allegedly occurred prior to January 1, 1998. ICBC stated that it was relying on a July 26, 1999, "directive" from the Ministry as the basis for its actions. ICBC was referring to a July 26, 1999, communication from an official who was then responsible for the Ministry's photo radar prosecutions. The official noted in a letter that she was "apprised...of the situation with respect to the number of unserved photo radar tickets" and had been asked "to get instructions from headquarters about establishing a cut-off date for service of outstanding tickets." She provided the following instructions to ICBC:

*I spoke to X last week about this issue. His instructions are to serve all tickets with a violation date after January 1, 1998. The Crown will enter a stay of proceedings with respect to any tickets with a violation date prior to January 1, 1998...*

The Ministry indicated that it would no longer be pursuing those alleged offenders due to the delays in serving notice to them. ICBC immediately discontinued its attempts to serve some 8,000 photo radar tickets for alleged offences occurring prior to January 1, 1998. The delay in serving a high number of outstanding photo radar tickets was clearly identified as the reason for the Ministry's instructions to ICBC on July 26, 1999.

Unfortunately, ICBC interpreted the letter from the Ministry to be a directive issued pursuant to section 18.1 of the *Offence Act* — even though the letter made no reference to section 18.1 of the *Offence Act* — and applied the date contained in the July 26, 1999, instruction literally. Consequently, ICBC ceased serving outstanding photo radar tickets where the offence was alleged to have occurred prior to January 1, 1998, and continued serving all tickets with an alleged offence occurring after that date. ICBC maintains that the Ministry did not instruct it to adopt a practice of ensuring that photo radar tickets were not served for offences that occurred more than 18 months earlier.

ICBC provided us with documentation to support its claim that it did seek direction from the Ministry with respect to whether to continue serving dated photo radar tickets. As of June 2000, ICBC understood that the Ministry did not intend to provide further direction on the issuing of unserved photo radar tickets. ICBC maintains that during this period its staff received feedback from Ministry officials to the effect that the Ministry was focussing its considerations on the broader question of the possible cancellation of the photo radar program. While ICBC did not make a specific written request for the issuance of a directive under Section 18.1 of the *Offence Act*, it has claimed that from June 2001 onward it "was clearly asking for direction about when to stop service" of the dated photo radar tickets.

Electronic mail correspondence between ICBC and the Ministry confirms that from at least July 2001, ICBC's representatives were seeking direction "as to which tickets should continue to be served and which ones will likely not withstand the court process due to the amount of time between the offence and the service date."

By the time the growing problem of unserved dated tickets was eventually acknowledged by the Ministry, in January 2002, the problem had escalated to a point where it appeared that representatives of the Ministries of Attorney General and Finance no longer viewed this as an administration of justice issue but as a revenue issue that was significant enough to require the input of the Ministry of Finance. At that time, the Ministry of Attorney General asked ICBC to prepare a briefing note to the Minister of Finance setting out the costs to ICBC and the potential revenue implications for government, with a recommendation that the service of stale-dated photo radar tickets be stopped. The number of unserved photo radar tickets exceeding the time lines cited by the Ministry had grown from 8,000 tickets in 1999 to approximately 200,000 tickets by the time the Ministry eventually issued its directive in September 2002.

The Ministry advised us that the true dimensions of this problem were not brought to its attention by ICBC until the summer of 2002. The CJB maintained that the focus of its 2001 discussions with ICBC "centered on issues arising

from the anticipated and eventual cancellation of the photo radar program by the Government." The CJB advised us that "it was only later in 2002 that senior officials of the CJB became aware of the specific issue of ICBC serving 'old' tickets on individuals who had made no attempt to evade service." Although the CJB was aware in July 2001 that ICBC had over 200,000 unserved photo radar tickets dating back as far as 1996, the CJB maintains that it understood that all of the dated tickets involved situations where people had attempted to evade service of the tickets.

I have carefully considered ICBC's claim that it interpreted the July 1999 directive from the Ministry in the only way that it could. ICBC has maintained that seeking clarification of the Ministry's instructions contained in its July 26, 1999, letter was unnecessary as the instructions were "straightforward and clear."

During the course of our investigation, we questioned ICBC if anyone representing ICBC had asked if the "cut-off date" identified by the Ministry of Attorney General was to be interpreted literally or if the intention of the Ministry of Attorney General was to ensure that on an ongoing basis, tickets older than a certain number of months would not be served to alleged violators. ICBC advised us that it had "operated on the understanding that the direction given was not open to interpretation." ICBC also informed us that it had never considered the instructions from the Ministry of Attorney

General to mean that a “moving or rolling” cut-off date should be utilized (i.e., to ensure that no traffic tickets older than a certain number of months would be served). ICBC indicated that “the Ministry was aware that ICBC was continuing to process tickets with violation dates after January 1, 1998” and that until September 25, 2002, ICBC received no further direction from the Ministry on this matter.

Regardless of whether ICBC’s interpretation of the July 26, 1999, instruction is technically accurate, the literal interpretation that ICBC gave to the Ministry’s instruction is implausible. ICBC was clearly aware that the Ministry did not choose to reissue new instructions to ICBC each month citing an updated and specific cut-off date for the service of photo radar tickets. It is reasonable to expect that ICBC officials should have known that their interpretation of the Ministry’s instructions was not a resolution to this growing problem.

The Ministry asserted “that once ICBC was aware of the problem, it would have been appropriate to fully explain the nature of the problem to Ministry officials in order that a specific resolution could be determined.” Although the Ministry concedes that “in hindsight one may conclude that communications could have been improved,” it maintains that it was not responsible for ICBC’s interpretation of communication considered by the Ministry to be a “clearly worded letter.”

While I do not agree with ICBC’s interpretation of the July 1999 instruction from the Ministry, I can accept that ICBC felt constrained by the narrow wording that was used. The July 1999 instructions seem to have been submitted to ICBC on the basis of ongoing concerns about the timeliness of ICBC’s service of photo radar tickets. Unfortunately, rather than proactively seeking formal clarification as to what was intended by the July 1999 instructions from the Ministry, or requesting a written directive from the Ministry under section 18.1 of the *Offence Act*, ICBC chose to continue raising concerns during its contact with the Ministry to alert them to the reality that it was continuing to serve stale-dated photo radar tickets.

ICBC’s deference to the Ministry with respect to policy and legal advice may be understandable given the administrative nature of the role assigned to ICBC. However, it seems reasonable to conclude that at some point between July 1999 and September 25, 2002, ICBC could have been more forceful in bringing to the Ministry’s attention the true magnitude of the problems that were occurring as a result of ICBC’s adherence to the July 1999 instructions citing the specific date of January 1, 1998. However, by September 24, 2002, ICBC was continuing its attempts to serve stale-dated photo radar tickets, some of which were issued for alleged offences that occurred as long as 55 months earlier.

While ICBC may have been interpreting the

original July 1999 direction from the Ministry in a narrow and restrictive way, our investigation indicates that the Ministry should have been well aware that ICBC was continuing to try to serve significantly dated photo radar violation tickets. Our investigation showed that the Ministry had repeated opportunities to flag the problem of ICBC's continuing attempts to serve stale-dated photo radar tickets and that it provided little direction. In addition, there is little evidence to suggest that the Ministry took steps to clarify its July 1999 instructions to ICBC. There appears to have been an unwillingness to take effective measures to address the problem that was emerging. Whether or not senior officials of the CJB were alerted to the precise nature of the delay problem, ICBC's requests for advice seemed to go unheeded. It appears that the Ministry was slow to react to the apparent need to issue a directive to ICBC to correct a problem that a Ministry official had attempted to resolve as early as July 1999.

It would appear that there was a breakdown in communication between two public authorities co-managing a massive government program that impacted thousands of members of the public who were issued photo radar tickets. Common sense should have led to questions being raised as to whether it was appropriate to continue using the specific date cited in the July 26, 1999, letter as the cut-off date or whether a moving cut-off date setting 18 months as the stale-dated criterion was intended.

It is particularly troubling knowing that both the Ministry and ICBC appeared to be aware of the problems associated with the collection of traffic camera tickets as early as 1999. It was not until the Ministry issued a formal directive to ICBC, pursuant to section 18.1 of the *Offence Act*, that ICBC discontinued the serving of stale-dated photo radar tickets that were more than 18 months old. That directive was issued on September 25, 2002 — 38 months after the Ministry's first instruction to ICBC on serving such tickets older than 18 months old.

The September 25, 2002, directive to ICBC stated "that all unserved photo radar violation tickets shall henceforth be withdrawn unless ICBC has and provides evidence to indicate that the reason service has not yet occurred is due to active evasion by the alleged violator occurring prior to September 25, 2002." In taking this action, the Assistant Deputy Attorney General responsible for the CJB advised ICBC "that the delays are significant and in many cases constitute undue delay pursuant to section 11(b) of the *Canadian Charter of Rights and Freedoms*. At the same time, the CJB also adopted a policy "whereby photo radar violation tickets which exceed 18 months since the date of the offence will not be prosecuted further unless the prosecutor has some evidence indicating that the delay in bringing the matter to trial has been caused by conduct of the alleged offender (i.e. active evasion of service, request for court adjournments, etc.)."

As noted previously, the Ministry's issuing of directives to ICBC under Section 18.1 of the *Offence Act* has addressed many of the problems that first alerted my Office to these issues and that resulted in my decision to launch an Ombudsman initiated investigation into delays in the administration of the traffic camera program.

The September 25, 2002, directive, issued 44 days after my Office commenced its investigation, resolved the ongoing problem of delayed service of photo radar violation tickets, and I am therefore not issuing formal recommendations regarding this matter. However, I have suggested that ICBC and the Ministry take measures to prevent the problems that arose from happening again. ICBC has advised me that it has taken action to ensure that its staff request instructions from the Ministry in writing, where appropriate, and to ensure that any problems that arise are reviewed, on a timely basis, with staff at the appropriate level in the Ministry.

Although the Ministry's issuing of the

September 25, 2002, directive resolved my concerns about ICBC serving stale-dated photo radar violation tickets, my Office continued to have concerns about what had occurred and about some related events that followed, including

- The overall issue of the procedural delays in serving violation tickets by ICBC.

- The 18-month period specified in the September 25, 2002, directive.

- The second directive issued by the Ministry in December 16, 2002, to address delayed service delivery of ongoing intersection safety camera violation tickets.

- The adequacy of options to contest tickets that had been served beyond the identified timeframe of 18 months.

- ICBC's collection of photo radar fines.

- Affidavit filing fees.

This report goes on to address the above in the order listed, followed by my concluding remarks.

## Procedural Delays in Serving Photo Radar Tickets

ICBC noted that it has “made every reasonable attempt to serve photo radar tickets in a timely way.” ICBC advised us that “where delays have occurred, they have not, with possible occasional exceptions, been due to inaction or hindrance on ICBC’s part.”

Our investigation indicated that major delays in the serving of many thousands of photo radar tickets occurred during the phase when ICBC was attempting to obtain “improved addresses” and then return the tickets to the process servers. ICBC’s goal was to complete this phase within eight months. However, as the number of outstanding violation tickets waiting to be served grew over the years, it sometimes took more than two years for ICBC to resubmit a violation ticket to the process servers for a further delivery attempt.

Staffing levels for ICBC’s handling of the photo radar program were reduced from a peak

of about 30 people to 11 people by August 2002. While our investigation has confirmed that ICBC adopted measures to locate owners of vehicles cited for photo radar offences and attempted to make more effective use of limited resources, the reduction in staff assigned to these tasks by ICBC no doubt had an impact on attempts to serve violation tickets. As well, administrative improvements often only resulted in more frequent unsuccessful attempts to serve the violation tickets through process servers. Our investigation indicated that there is no guarantee that ICBC’s commitment of more resources to processing unserved violation tickets would have led to a markedly higher service rate for these tickets. Had the Ministry not issued its September 2002 directive to ICBC, there is little evidence to indicate that ICBC would have strayed from its often futile efforts to serve old violation tickets.

## Measures Taken to Address Delays in the Service of Photo Radar Tickets

The initial phase of our investigation was directed at ensuring that adequate measures were taken to resolve the ongoing problems created by delays in serving photo radar tickets. We needed to consider how the Ministry determined the time period for timely service of photo radar tickets and whether the 18-month time period selected by the Ministry provided a fair resolution to the ongoing problems. As outlined below, our investigation has concluded that the process followed by the Ministry, and the outcome achieved, resulted in a fair resolution of the ongoing problems associated with the delayed service of photo radar tickets.

I understand that the 18-month period was identified by the Ministry on September 25, 2002, on the basis of legal advice provided by counsel for the CJB of the Ministry. As outlined below, subsection 11(1)(b) of the *Ombudsman Act* stipulates that my jurisdiction as Ombudsman does not extend to investigating recommendations of a solicitor acting for an authority. That subsection reads in part as follows:

- 11 (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission...*  
*(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.*

Although the September 25, 2002, action by the Ministry was issued on the basis of legal advice provided to the Ministry, the terms of the directive itself would be subject to my jurisdiction as Ombudsman. In such circumstances, I would expect that the selection of 18 months as the deadline for timely service of photo radar violation tickets would be chosen after seeking and considering legal advice provided to the Ministry. I am satisfied that an adequate process was followed and that legal advice was sought and considered in the formulation of the directive to ICBC.

The Ministry could have identified a shorter time period for defining undue delays. Although the courts might reject some photo radar tickets served between 12 and 18 months of the alleged offence, the Ministry could not state with sufficient certainty that the courts would reject such tickets as having been unduly delayed. Under these circumstances, the Ministry took the approach that the courts would be best suited to make determinations on whether ICBC's service of tickets between 12- and 18-months-old constituted undue delay. The Ministry appears to have taken a reasonable approach in directing ICBC to discontinue serving only those photo radar tickets that would clearly be rejected by the courts as contravening section 11(b) of the *Canadian Charter of Rights and Freedoms*.

On this point, I would only suggest that the Ministry monitor decisions of the courts to ensure that the directives that it has issued to ICBC relating to the service of traffic camera tickets remain consistent with the emerging jurisprudence

in this area of the law. If the courts consistently reject traffic camera tickets that are served at time frames less than 18 months, I would expect the Ministry to adjust its directives to ICBC accordingly.

## Extension of Directive to Intersection Traffic Safety Tickets

Most of the individuals who have approached our Office with concerns about the delayed service of traffic camera tickets by ICBC have done so with respect to photo radar tickets. The Ministry's September 25, 2002, directive to ICBC was clearly limited to photo radar tickets.

However, on December 16, 2002, the Ministry issued a second directive to ICBC acknowledging that the problems of delayed service delivery extended to include the ongoing traffic camera program: the intersection traffic safety tickets. In the December 2002 directive, the Ministry directed "that all unserved intersection safety camera violation tickets alleging an offence date greater than 12 months earlier shall henceforth be withdrawn unless ICBC has and provides evidence to indicate that the reason service has not yet occurred is due to active evasion by the alleged violator."

From an early stage in our investigation, we

raised concerns that the same procedural deficiencies that had contributed to the delayed service of photo radar tickets seemed to apply to the service of intersection traffic safety tickets. Although we were assured by ICBC that the delays associated with the intersection traffic safety tickets were not of the same magnitude as the delays in the discontinued photo radar program, we did raise concerns that essentially the same system was in place to serve both types of tickets. It seemed reasonable to expect that the CJB would have made such a connection between the two programs, given the identical notification processes. The Ministry has advised us that it limited the focus of its review of traffic camera tickets in the summer of 2002 to a consideration of photo radar tickets. The Ministry has maintained that it bears no responsibility for the tardy recognition of the delays in serving intersection traffic safety notices because ICBC had not

alerted the Ministry to the existence of this “discrete problem.”

While I was encouraged to hear of the Ministry’s decision to extend its directive to ICBC to include the intersection traffic safety program, it seems that information about

both programs should have been provided by ICBC prior to the issuance of the September 25, 2002, directive. Once again, I would note that there appears to have been a breakdown in communication between ICBC and the Ministry on this point.

## The Adequacy of Options to Contest Delayed Service of Traffic Camera Offences

### Supreme Court

When we first commenced our investigation, we learned that there was an avenue whereby individuals could apply to the Supreme Court of British Columbia for an extension of time to appeal their traffic camera offence to the Provincial Traffic Court. Many of the people who were referred to this process by my Office claimed that they were not notified of their traffic camera offence until many months beyond the 18-month time period noted in the Ministry’s September 2002 directive. Many paid the fines when they renewed their insurance because to do otherwise would have left them without insurance, an impractical option for them.

On June 19, 2003, I issued a press release to alert those who did not receive notification of their photo radar tickets within 18 months of the alleged offence. My press release advised of the mechanisms

still available to contest those offences. I noted that these mechanisms were available even if the fine had been paid. In my opinion, this action was necessary as our investigation revealed that individuals were not aware or fully informed that they could still contest a photo radar offence if the delayed service of these tickets had compromised their ability to contest the offence. In the Backgrounder to my press release, which is on our Office’s website, I outlined the existing process by which we referred people to the Supreme Court of B.C. as follows:

*Until July 1, 2003, the only mechanism that we are aware of that might be able to assist you is to submit a notice of “application for extension of time to appeal” your photo radar ticket, if you believe that your ability to contest the ticket was compromised by delays that were out of your control. You would have to file this notice with the Supreme Court of British Columbia. You*

*would need to obtain this application from the Supreme Court and would require a copy of the photo radar ticket in question.*

*If you are no longer in possession of the ticket, you can request a duplicate copy by calling ICBC Customer Contact at 250-978-8300 in Greater Victoria or 1-800-950-1498 elsewhere in British Columbia.*

*If you attend in person to submit your application before July 1, 2003, the Supreme Court Office may be able to tell you when you would be scheduled to appear before a Justice of that Court. If successful in your application, the matter would normally be referred back to Provincial Court for consideration of your dispute of the ticket. If you are interested in pursuing this option, you should contact any Supreme Court Office and request a "notice of application for an extension of time to appeal." Any Provincial Court Services Office should be able to direct you to the nearest Supreme Court Office.*

Those who did pursue this option through the Supreme Court of B.C. generally reported that they were pleased with the outcome of their initiative. However, I remained concerned that for many people the prospect of a two-stage court application commencing at the Supreme Court of B.C. was not a viable option to contest a traffic camera ticket.

On March 17, 2003, I raised these concerns with the Ministry and asked if the Ministry would consider developing a more user-friendly administrative way of activating appeals of traffic camera offences where ICBC had not served the

tickets in a timely manner. Although the Ministry gave my concerns consideration, it chose not to introduce a separate administrative remedy for these people.

### **Provincial Court**

During the course of our investigation, we learned of changes to the *Offence Act* that were brought into effect by Order-in-Council No. 0567 on June 5, 2003, by way of the *Attorney General Statutes Amendment Act, 2002*. One of the effects of this legislative change was to alter the process whereby individuals could seek an extension of time to contest traffic camera tickets. As of July 1, 2003, individuals who wanted to contest traffic camera tickets on the basis of delayed service of these tickets could seek a remedy with the Provincial Court instead of the Supreme Court.

In the Backgrounder to my June 19, 2003, press release, I advised that as of July 1, 2003, individuals could commence the process of contesting a traffic camera offence by approaching any Provincial Court office to obtain and submit the relevant Affidavit (Form G of the *Offence Act Forms Regulation*, B.C. Reg. 422/90 as amended).

The changes to the *Offence Act* that took effect on July 1, 2003, make the court process more accessible to those who believe that they were not served traffic camera tickets within a timely period. By taking this action, the Ministry created a more accessible means of redress for individuals who were clearly not notified of traffic camera offences within a period that would

have been acceptable to the courts. However, the changes did not go as far as I thought was necessary to create a more user-friendly administrative way of activating appeals for those who were not served tickets in a timely manner. The Ministry and ICBC were aware of the problem of

delayed service of photo radar tickets as early as July 1999 and did not take effective action to address the problem. I remain disappointed that the Ministry was not prepared to take the corrective action that I was suggesting.

## ICBC's Collection of Photo Radar Fines

During the course of our investigation, we were also approached by a number of complainants who were concerned that ICBC was pursuing the collection of photo radar fines while they attempted to seek leave to appeal the offences to the Supreme Court of B.C.

When we enquired about this aspect of ICBC's collections process, we learned that ICBC disengaged its collection activities once an individual had obtained leave from the Supreme Court to contest the offence in Provincial Traffic Court. However, individuals in some communities could not expect to appear before a Supreme Court Justice for a number of months. If these individuals needed to renew their motor vehicle insurance during this period, they had little option but to pay the fines as ICBC would not issue them insurance

until all outstanding fines were paid. As the Crown would not contest most of these applications, this led to a rebate very soon after ICBC collected the fine.

After discussing this situation with ICBC representatives, ICBC's Collections Department agreed to forestall collection activities on individual cases upon receipt of evidence that an individual had obtained a date with the Supreme Court of B.C. to seek leave to appeal a traffic camera offence for a ticket served outside the 18-month period set out in the Ministry's September 2002 directive.

As was noted above, as of July 1, 2003, those wishing to contest traffic camera violation tickets after the expiration of the time to dispute these tickets can do so only by filing the relevant Affidavit with a Court Services Office with the Provincial Court. During the course of our investigation, we raised concerns with the Ministry that this new process imposed a filing fee on those wishing to contest traffic camera tickets whereas the previous system of submitting an application to the Supreme Court of B.C. imposed no such fee.

Initially, the Ministry advised us that Court Services Offices were charging a \$31 fee for the filing of this Affidavit. I corresponded with the Ministry questioning the fairness of imposing this additional affidavit filing fee on those persons who were attempting to dispute their tickets in court. In response, the Ministry advised us that Court Services Offices had been incorrectly applying the \$31 filing fee, a fee derived from the Supreme Court of B.C., instead of the correct \$15 filing fee. The Ministry subsequently advised us that there was a great deal of inconsistency in the fees charged for filing affidavits with Court Services Offices. This inconsistency in the fees charged for filing affidavits extended beyond those associated with photo radar offences. Some Court Services Offices had not been charging for the filing of affidavits while others had been charging \$15 or \$31. Although action was taken to ensure that the correct fee is now being

charged for the filing of affidavits in Provincial Court, I have expressed concerns to the Ministry that many persons may have been charged over twice the correct fee for filing affidavits with the Provincial Court.

The Ministry was able to identify 53 people who paid more to file affidavits than they should have during the first 17 days of July alone. After I raised concerns that the Ministry ought to be refunding the amount of the overcharge to people who had paid too much to file affidavits, the Ministry agreed to reimburse the above-noted 53 individuals who had submitted affidavits in traffic court. However, it appears that for some time other individuals may have been overcharged, and the Ministry has provided no satisfactory explanation as to why it cannot take more effective measures to address this problem. At this stage, we have been unable to ascertain how long this error went unnoticed and how many persons may have been affected.

As the mechanism identified by the Ministry to resolve this matter has not satisfied my concerns, I have opened a separate Ombudsman initiated investigation into this matter. I am continuing to exchange correspondence with the Ministry of Attorney General and hope to be in a position to report publicly once my investigation is completed.

## Concluding Remarks

As stated previously in this report, it was not necessary for my Office to issue formal findings or recommendations to resolve the issues that arose in the administering and collecting of traffic camera fines. The problems outlined in this report have, for the most part, been resolved through the directives issued by the Ministry. Further, my Office's suggestions to improve communications between ICBC and the Ministry have been implemented.

The following comments summarize my Office's involvement that began with our concern about delays associated with administering and collecting traffic camera fines. It was apparent throughout our investigation that a major contributing factor to the problems that occurred was the undertaking of such an initiative by two government agencies with each agency having responsibility for different parts of the initiative. While there seems to have been recognition by both agencies that problems arose due to the delayed service of traffic camera tickets, no one agency or department appeared to have overall responsibility for the entire program and therefore for addressing the problems as they were occurring.

When a public program is delivered through the joint efforts of two or more departments or agencies, it is essential to maintain clear lines of communication to ensure that information is correctly communicated and that issues that may arise around service delivery are addressed in a

timely manner. The interconnected lines of responsibility for different segments of this program contributed to an initiative that was fraught with misunderstood communication. The absence of one person or one agency being in charge of the traffic camera program appears to have contributed to the missing overall leadership that may have led to a more effective delivery of the traffic camera program. Such overall leadership, I suggest, dramatically increases the chances of program success. It appears that if information had been more accurately determined and more effectively shared from the outset, many of the problems that arose would have been mitigated. When pieces of information are vague, missing or not shared effectively, chances of program success greatly decline.

It is my hope that the lessons learned from the delivery of the traffic camera program are valuable ones to carry into other shared-agency program delivery initiatives.



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